

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
February 16, 2011

Meeting Began At: 3:32 P.M.

Meeting Ended At: 4:30 P.M.

Members Present: Chris Beutler, Tim Clare, Jayne Snyder

Item 1 - Introductions and Notice of Open Meetings Law Posted by Door

Chair Snyder opened the meeting and advised that the open meetings law is in effect and is posted in the back of the room.

Item 2 – Public Comment and Time Limit Notification

Snyder stated that individuals from the audience will be given a total of five minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record and sign in.

Item 3 – Approval of the minutes from the JPA meeting held January 26, 2011

Snyder asked for any corrections or changes to the minutes from January 26, 2011. Hearing none, Beutler motioned for approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 – West Haymarket Progress Report

Jim Martin, Program Manager with SAIC, came forward and informed the Board that he will present a more formal report at the second meeting of each month. Martin stated that the arena is on schedule and the preliminary schematic design should be delivered on February 25th with a final delivery to the JPA prior to the March 24th meeting. The infrastructure projects are on schedule which includes: The Post Office, 10th and Salt Creek, M and N Streets and the hole in the donut. There has been a Kick-Off meeting for the Charleston Street Bridge and a couple of others but they are just beginning.

Item 5 – Approval of Payment Registers

Don Herz presented the January Check Register and Public Works Engineering Costs to the Board. The check register totals \$1,957,135 with the most significant item being a payment to Burlington Northern for just over \$1 million, which is in conformance with the budgeted amount.

Clare inquired about Union Pacific track work #4 and #5 shown in the register. Dan Marvin explained that there are two bridges near Salt Creek, one being the Burlington Northern Bridge which is active. That bridge will be deactivated and a bridge to the south, the Union Pacific Bridge, will be activated to carry all rail traffic to the northwest. This will open up a pocket where the surface parking lot south of the Haymarket ball field is located. The JPA will be able to reclaim the old Burlington Northern Bridge and turn it into a pedestrian bridge at some point in the future.

Clare asked what insurance coverage is provided with the payments made to Aon. Marvin noted that the \$81,800 was for the second layer of the \$25/\$25 million insurance and the payments for \$228,866 and \$130,037 are for the first layer of \$25/\$25 general liability insurance. The JPA obtained \$50/\$50 million general liability insurance because it was cheaper than buying a \$25/\$50 million policy and it is a requirement of the Burlington Northern agreement to have a minimum coverage policy of \$25/\$50 million.

Clare inquired as to why \$46 million was paid to Burlington Northern when only \$44 million was budgeted in the construction expenditure report. Marvin pointed out that some of those dollars will eventually be moved into the stormwater mitigation line item. Burlington Northern hired a contractor, Riley, to build their rail track but at this stage they are doing the grading work necessary for stormwater mitigation on the west side of the tracks. They will also be building areas where water can flow under the tracks. During early negotiations, it was decided that it would not be wise to have two crews in close quarters which could cause coordination and insurance issues. It was more efficient to have Riley do some of the stormwater work which is what the additional dollars are for. When all of the numbers are in Herz will transfer those dollars to the stormwater line item.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the payment registers. Clare seconded the motion. Motion carried 3-0.

Item 6 – Review of the January 2011 Expenditure Reports

Don Herz noted that the Construction Expenditure Report has been updated to include the payments that the Board just approved which brings the total to \$55,577,623. Herz plans to have encumbrances included on the next report. He pointed out to the Board that the Miscellaneous Contractual Services line in the Operating Expenditure Report is what the three City positions are being paid out of. Those expenditures have been made but the City has not yet been reimbursed. Herz plans to get that completed soon.

Snyder asked about the JPA debt shown on the Construction Expenditure Report, lines 870976 to 870979. Herz indicated that those are a break out of 870975, which is the \$5.16 million cost of issuance budget. He decided to show those as separate line items. The cost of issuance is less than what was budgeted however there will be one more significant bond issue brought to the Board in about 18 months.

Clare informed those present that in follow-up to previous discussions, the Board asked Marvin and Herz to put together a listing of the contracts that have been awarded so far. This chart will

contain the name of the company that won the contract, the amount of the contract and whether the company is local or out of state. This project was billed as one that would utilize local labor and local talent, so this information will be available for the public to view on the website. Excluding the contracts that will be awarded today, over \$24 million in services has been contracted so far of which \$21 million was awarded to companies with a local presence. That doesn't necessarily mean the company's office is exclusively local, for instance, DLR has offices in Lincoln and Omaha. This information will be kept up to date through the entire construction process and will be up on the website by the end of the week.

Snyder added that two of the out of state contracts were awarded to Aon Insurance. Although that company is not local, it was important for the JPA to secure reliable liability insurance for this project.

Item 7 – Bill No. WH 11-15 Resolution to approve Agreement with Alfred Benesch and Company to provide Comprehensive Geotechnical Engineering Services for (1) West Haymarket hole in the donut area fill assessment; (2) preliminary subsurface exploration – multistory structure sites located south of Arena and A-17 parking garage sites; and (3) flood storage area excavated soils characterization and assessment of suitability (w/o manipulation) as building fill. Benesch's fee for performing the Comprehensive Geotechnical Engineering Services is \$57,000 as more particularly set forth in the fee estimate on page 5 of Exhibit C to the Agreement.

Jim Martin stated that this contract is with Alfred Benesch for three new tasks. Their first task will be to test the soils in the donut. The tests will determine if those soils are suitable for use as fill beneath the arena, garages and other buildings. In order to be conservative, the original Transportation Environmental and Utilities Plan (TEUP) estimate budgeted for all fill to be imported. There will be a savings if the soil that is there or adjacent can be used for fill or deep fill.

Their second task will be to test the area south of the arena and north of O Street. There has already been some comprehensive geotechnical exploration under the arena and now the same testing needs to be done for the parking garages and to prepare pad sites for any other buildings. The testing will also serve a dual purpose as Benesch will be looking at the soil as the drill brings it up so the limits of any contamination will be known for certain.

Their third task will be to test the soils west of the donut where TJ Osborn is currently digging to determine if those soils are suitable for deep fill inside the donut. Some of the soil has been excavated and it is very wet and contains some rubble. The total cost of the three tasks is \$56,637 with a total contract amount not to exceed \$57,000. The period of performance is three weeks for task 1, two and a half weeks for task two and three weeks for task 3. SAIC recommends approval of this contract modification.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 8 – Bill No. WH 11-16 Resolution to approve Amendment No. 4 to the Agreement with DLR Group Inc. to add a table listing Additional Specialty Consultants Services as part of Section 4.1 of the Agreement.

Jim Martin informed the Board that this amendment has no cost impact and is a housekeeping issue. These pages were left out of the original DLR amendment which was approved by the Board months ago. The omission was caught during final review of the documents and the amendment simply adds this table as part of the original amendment. SAIC recommends approval of this resolution.

Beutler noted that the document has a marked up change on 4.1.27. Rick Peo advised that there was a typo but the original document has been corrected.

Snyder asked for any comments from the public. Hearing none, Clare made a motion to approve the resolution. Beutler seconded the motion. Motion carried 3-0.

Item 9 – Bill No. WH 11-17 Amendment No. 3 to the Consultant Agreement between the JPA and Benham (now known as SAIC Energy, Environment & Infrastructure LLC) to extend the term for completion of all obligations of the Agreement to March 24, 2011.

Rick Peo explained that this is another extension of the interim contract with Jim Martin. They have been trying to find time to negotiate the final draft of the complete agreement. The last agreement was extended to the end of February but the end of February meeting has since been canceled. Peo is requesting to extend the interim contract to the end of March.

Snyder asked for any comments from the public. Hearing none, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 10 – Bill No. WH 11-18 Resolution to approve the acquisition of the N Street Company LLC property (i.e. Alter Scrap Metal Site) and JayLynn property (i.e. lumber yard site) needed for the West Haymarket Project by purchase if possible and by condemnation if necessary.

Snyder announced that the Board would be moving into Executive Session for protection of the public interest to discuss the negotiations for the acquisition of the N Street Company LLC property (i.e. Alter Scrap Metal Site) and JayLynn property (i.e. lumber yard). At the end of Executive Session, the meeting will be reopened and the Board will then vote on Bill No. WH 11-18. Beutler made a motion to move into Executive Session. Clare seconded the motion. Motion carried 3-0. The JPA Board entered into executive session at 4:00 P.M. The JPA Board exited Executive Session after a motion made by Beutler and seconded by Clare at 4:22 P.M.

Rick Peo explained that the two properties in question, Alter Scrap and the lumber yard have always been identified as being necessary for the West Haymarket project. There are two purposes in acquiring the properties. First, both properties are currently served by a rail spur and with the Burlington Northern track relocation, that rail spur will have to be closed. The other purpose is to have the properties available for redevelopment activities in the West Haymarket

project. Negotiations with the two properties have been ongoing for several months. Negotiations have been amicable but the relocation of two large business of this nature is very complex and finding alternate location sites is taking a long period of time. As they work through those details, they have been coming toward an impasse with the railroad track work to begin this summer. They also need to obtain Surface Transportation Board approval for the track relocation, so the properties either need to be acquired or they need consent to terminate rail service. The termination doesn't have to happen this year, but the agreement to terminate has to be in effect by May to keep on target. Peo expects that the property owners will have the option of remaining in operation for several months until the property is needed for environmental cleanup and staging. There is still plenty of time to work out a voluntary purchase but the possibility of condemnation is needed to get effective legal title in order to have the track work done on time.

Snyder thanked the legal staff for working so amicably with these two businesses. Clare agreed and noted that in the due diligence he has conducted, the players involved with negotiations were very complimentary and said this has been going well and they understand this is a timing issue not a hostile situation.

Snyder asked for any comments from the public. Deena Winter came forward and asked if the Board was giving authority to use eminent domain if necessary. Snyder stated that staff are running against the May 8th final closing with Burlington Northern so it would only be used if necessary. Peo added that if a condemnation petition is filed a hearing date would be set, the Board of Appraisers would appraise the property and they would award damages. The JPA would then deposit that money in County Court and at that time the JPA would be deemed to have received legal title to the property. That doesn't mean the award is conclusive or that negotiations won't continue, it is basically the mechanism to get the title. Peo envisions that voluntary negotiations would be ongoing and would not be hostile, it would just buy time. Winter then asked what the problem is that has caused the impasse. Dan Marvin answered that it is a timing issue and negotiations are continuing.

Hearing no other comments, Beutler made a motion to approve the resolution. Clare seconded the motion. Motion carried 3-0.

Item 11 – Set Next Meeting Date

The meeting scheduled for Thursday February 24th has been canceled. The next meeting will be held on Wednesday March 9, 2011 at 3:30 in Room 303.

Meeting adjourned at 4:30 P.M.

Prepared by: Melissa Ramos-Lammli, Engineering Services